THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16809 OF 2006

14th AUGUST, 2006

BETWEEN

M/s.Goldstone Exports Pvt Ltd., and others.

… Petitioners

vs

The Joint Collector-II, Ranga Reddy District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16809 OF 2006

ORDER:

The petitioners who are sixteen (16) in number are assignee decreeholders in respect of land admeasuring Acs.98.10 guntas in survey No.172 of Hydernagar village of Balanagar Mandal in Ranga Reddy district. The said land is one of the suit schedule properties in C.S.No.14 of 1958, which is pending before this Court. In interlocutory matter being application No.65 of 1983 in C.S.No.14 of 1958 (partition suit, in which preliminary decree was passed), this Court statedly issued directions to the Advocate Commissioner (appointed in final decree proceedings) to address the revenue authorities for mutation of the rights of the respective parties. In obedience thereto, Advocate Commissioner addressed a letter, dated 22.12.1983, to the District Collector for mutation of the names of defendant Nos.157 and 206. The petitioners were assigned the decreetal rights by defendant No.206 under a deed of assignment, which was approved by this Court in application No.15 of 1996. Be that as it is, in view of the orders of this Court in application No.65 of 1983 and the consequential letter of the Advocate Commissioner, the Mandal Revenue Officer

issued proceedings, dated 10.02.1997, bearing No.B/1027/96, dated 10.02.1997, granting mutation in favour of the petitioners in respect of the land in survey No.172. By reason of which, the petitioners are allegedly in possession of the property. Notwithstanding the same, the first respondent who is competent authority under the provisions of A.P.Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity) issued notice in case No.D5/3861/2006, dated 04.08.2006, to the petitioners herein and twenty others. In purport of exercise of *suo motu* revisional powers under Section 9 of the Act, the petitioners were informed to appear for hearing on 08.08.2006 before the first respondent. The reasons and grounds on which the first respondent *suo motu* took up that matter are mentioned in the notice, dated 04.08.2006, which reads as under.

NOTICE

Case No.D5/3861/2006 Dated:04-08-2006

The Mandal Revenue Officer, Balanagar Mandal has effected mutation in respect of lands in Sy.No.172/1 to 172/25, extent Ac.196.20 gts. Situated at Hyder Nagar village of Balanagar Mandal vide his office file No.B/1027/1996, dated 10.02.1997, in favour of Sri Mirza Nazeer Baig & others and M/s.Goldstone Exports Pvt. Ltd. Secunderabad & others.

It is noticed that mutations have been effected when the title to the land was still in dispute. The lands in Sy.No.172 of Hydernagar village along with other lands were claimed by the Government as Government lands. The dispute was settled by the Supreme Court of India in SLP Nos.10622, 10623/01 and 4463 to 4470/02.

As the mutations have been effected when title to the land was still being claimed by the Government and when the title was not finally decided, the mutations appears to suffer from infirmity.

Therefore, in exercise of the revisional powers vested with the Joint Collector, Rangareddy District U/s.9 of the A.P.Rights in Land and Pattadar Pass Books Act, 1971, the orders passed by the Mandal Revenue Officer, Balanagar Mandal in file No.B/027/996, dated 0.02.997 in respect of land in Sy.No.72/ to 72/25 extent Ac.96.20 guntas situated at Hyder Nagar village of Balanagar Mandal are hereby taken up for Revision.

Further these lands are falling with in the Hyderabad Urban Agglomeration and are within the purview of Urban Land (Ceiling and Regulation) Act, 976. Mutations appears to have been effected without determination of Urban Land

Ceiling Surplus land, with reference to holders as on 28.0.976. Therefore revisional proceedings in respect of these orders are hereby initiated.

Therefore take notice that the case is posted for hearing before the undersigned on 08.08.2006 at 11.00 am.

You are therefore required to appear in this court on the said date and time either in person or through counsel and defend the case. Failing which the matter will be decided basing on the material available on record.

In this writ petition filed impeaching notice, dated 04.08.2006, learned counsel for the petitioners raised grounds more than one. Learned counsel, however, pressed the submission based on the delay in exercising revisional powers by the first respondent under Section 9 of the Act. According to the learned counsel if the first respondent is allowed to exercise *suo motu* revisional powers after lapse of about nine years in relation to the proceedings of the second respondent, dated 10.02.1997, the same would be illegal and arbitrary. He placed strong reliance on the decision of the Supreme Court in **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v K.Suresh Reddy**[1]. In the said decision, the apex Court considered the question whether the Collector can exercise *suo motu* power under sub-section (4) of Section 50-B of A.P.(Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Tenancy Act, for brevity) at any time or such power is to be exercised within reasonable time. After referring to relevant provisions of Tenancy Act, the Supreme Court held that Section 50-B(4) indicates that no specific period of limitation is prescribed for exercise of *suo motu* revisional powers and that the expression "at any time" must be held and construed textually and reasonably taking into consideration several circumstances and several factors. **Per contra**, learned Assistant Government Pleader for Revenue brought to the notice of this Court that when similar notice was challenged by other persons in respect of other item of suit schedule property in C.S.No.14 of 1958. This Court did not interfere in the matter and directed the Joint Collector to dispose of the revision petition expeditiously. He also submits that the writ petition is not maintainable as it is filed against a show cause notice.

There is no denial that when the Joint Collector exercised *suo motu* revisional powers under Section 9 of the Act, the said Officer is required to issue notice to the person/persons who are likely to be affected by exercise of such revisional power duly informing the grounds/reasons for which the Joint Collector desires to exercise *suo motu* revisional powers. That is the requirement of the proviso under Section 9 of the Act as well as Rule 23 of A.P.Rights in Land and

Pattadar Pass Books Rules, 1989. Therefore, the issue of notice by the Joint Collector as such cannot be faulted.

Learned counsel, however, vehemently contends that the exercise of power under Section 9 of the Act, after long delay of nine years is not contemplated by the Legislature and therefore, a show cause notice is issued by the Joint Collector under Section 9 of the Act after delay of considerable time, the same amounts to exercising the power without jurisdiction. This Court considers it not necessary to decide such question.

It is very well settled that a writ petition questioning the legality of the show cause notice proposing enquiry cannot be entertained by the High Court in exercise of its jurisdiction under Article 226 of Constitution of India. It is not only ordinary Rule but also binding law.

In **Special Director v Mohd.Ghulam Ghouse**[2], while reiterating axiomatic principle of judicial review against show cause notice, the Supreme Court observed that the question, "whether a show cause notice was founded on any legal premises is a jurisdictional issue, which can even be urged by the recipients of the notice and such issues can be adjudicated by the authority issuing the very notice initially". Therefore, even if it is a jurisdictional issue or an issue of jurisdictional error arises, it is always open to the petitioners to raise such issue before the Joint Collector in which event as held by the Supreme Court in **Special Director v Mohd.Ghulam Ghouse** (supra). The revisional authority or any statutory authority is bound to consider such issue of jurisdiction at the outset.

The writ petition, for the above reasons, cannot be entertained and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

14.08.2006
pln

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[1] (2003) 7 SCC 667

[2] (2004) 3 SCC 440